
BRADY HANDGUN VIOLENCE PREVENTION ACT OF 1993

On November 30, 1993, the Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103-159, was signed into law. The Brady Act required the United States Attorney General to establish a National Instant Criminal Background Check System (NICS) for Federal Firearms Licensees (FFLs) to contact for information to be supplied immediately as to whether the transfer of a firearm would violate Section 922 (g) or (n) of Title 18, United States Code (U.S.C.) or state law. Through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); the Department of Justice; and state and local law enforcement agencies, the FBI developed the NICS which was implemented on November 30, 1998.

ACCESS TO THE NICS

Access to the NICS is restricted to the following three circumstances:

- ❖ An FFL can initiate a background check only in connection with a proposed firearm transfer as required by the Brady Act and pursuant to 18, U.S.C., § 922(t)(1).
- ❖ Pursuant to Title 28, Code of Federal Regulations (C.F.R.), Section 25.6(j)(i), to provide information to local, state, or federal criminal justice agencies only in connection with the issuance of a firearm-related or an explosives-related permit or license.
- ❖ Title 28 C.F.R. §25.6(j)(2) permits the NICS to respond to inquiries by the ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act of 1968 or the National Firearms Act.

HOW THE NICS WORKS

All states have the option to implement a state-based NICS program. Such states serve as a point of contact (POC) between the NICS and the state's FFLs. The FFLs conducting business in these POC states contact a state-designated agency to initiate all background checks.

The FFLs conducting business in the states that do not operate in a POC capacity, otherwise known as Non-POC states, contact the FBI Criminal Justice Information Services Division's NICS Section to initiate background checks. Also, several states share responsibility with the FBI for processing background checks for the state's FFLs. These Partial-POC states process the FFL's handgun checks while the FBI processes the FFL's long gun checks.

When an FFL initiates a NICS background check, a search of the individual's name and descriptive information (e.g., date of birth, gender, race, state of residence, and place of birth) is conducted to identify any matching records in the following nationally held databases managed by the FBI:

Interstate Identification Index (III): The III maintains millions of criminal history records.

National Crime Information Center (NCIC): The NCIC maintains data specific to persons who are the subject of protection orders, criminal warrants, etc.

NICS Index: The NICS Index maintains information (not located in the III or the NCIC) about persons who are federally prohibited the transfer of a firearm pursuant to the Brady Act.

Also, a search of the applicable databases of the Department of Homeland Security's U.S.

Immigration and Customs Enforcement (ICE) is conducted on all non-U.S. citizens.

The majority of NICS checks are determined within seconds to minutes after the background check search is initiated. If the NICS does not match any records in the databases searched, the transaction is proceeded. However, if the search yields a valid match to prohibiting information, the transaction is denied.

If the search is matched to any potentially prohibiting records, the NICS Section must reach out to judicial and/or law enforcement agencies for the information needed to render a final decision. The Brady Act allows three business days for this purpose. If the information is not obtained within the three-business-day time frame and a final decision of proceed or deny is not made, the FFL has the option to legally transfer the firearm.

PRIVACY AND SECURITY

The data stored in the NICS is documented federal information. Access to this information is restricted to agencies authorized by the FBI. Extensive measures are taken by the FBI to ensure the security and integrity of the NICS information and agency use. The information specific to background checks that result in an allowed transaction is destroyed in accordance with existing federal law. Further information pertaining to privacy and security of the NICS is located via the NICS Web Site.

A deny message from the NICS indicates the subject of the background check has been matched with a similar name and/or similar descriptive features located on a criminal history record with the following federally prohibitive criteria or state law:

18, U.S.C. §922 (g)(1)

Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year

18, U.S.C. §922 (n)

Is under indictment for a crime punishable by imprisonment for a term exceeding one year

18, U.S.C. §922 (g)(2)

Is a fugitive from justice

18, U.S.C. §922 (g)(3)

Is an unlawful user of or addicted to any controlled substance

18, U.S.C. §922 (g)(4)

Has been adjudicated as a mental defective or committed to a mental institution

18, U.S.C. §922 (g)(5)

Illegally or unlawfully in the United States

18, U.S.C. §922 (g)(6)

Has been discharged from the Armed Forces under dishonorable conditions

18, U.S.C. §922 (g)(7)

Having been a citizen of the United States, has renounced U.S. citizenship

18, U.S.C. §922 (g)(8)

Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner

18, U.S.C. §922 (g)(9)

Has been convicted in any court of a misdemeanor crime of domestic violence

Please reference the Federal Register, Volume 62, Number 124, Rules and Regulations for more complete definitions of the prohibiting categories.

NICS SECTION INFORMATION

NICS Customer Service

1-877-FBI-NICS (324-6427)

NICS Section Facsimile

1-888-550-6427

NICS Appeal Facsimile

1-304-625-0535

**Telecommunications Device for the
Deaf (TDD)**

1-877-NICS-TTY

NICS Web Site

www.fbi.gov/hq/cjisd/nics.htm

NICS E-mail Address

a_nics@leo.gov

NICS Appeals E-mail Address

nicsappeals@leo.gov

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